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Roy F. Weston, Inc.  
11840-D Kempersprings Drive  
Cincinnati, Ohio 45240-1640  
513-825-3440 • Fax 513-825-3336

18 November 1996

Mr. Ray Carcione  
Foundry Sales & Supply, Inc.  
1203 West 65<sup>th</sup> Street  
Cleveland, Ohio 44102



Re: Ohio Industrial Trading Company  
Dayton, Ohio Property

RFW No. P96-3337

Dear Mr. Carcione:

Per our telephone conversation of 15 November 1996, with Mr. Aaron Bulloff, Roy F. Weston, Inc. (WESTON<sub>®</sub>) is pleased to submit this proposal to Foundry Sales & Supply, Inc. to provide immediate environmental consulting services to assist you in responding to the actions described in the U.S. EPA Administrative Order dated 4 October 1996 regarding your Dayton property. The letter pertains to federal proceedings taken under the Toxic Substances Control Act.

WESTON proposes to provide these services on a time and materials basis, in the not-to-exceed amount of \$5,000. This amount is not an estimate of the total effort to be expended, but is proposed simply as a pre-authorization ceiling for our mutual convenience. Unless otherwise authorized by you in writing, this ceiling will not be exceeded, and only effort associated with the immediate response to the referenced U.S. EPA Order will be incurred. Consulting services and out-of-pocket expenses will be invoiced based on the rate schedule in Attachment A. Please be aware that the not-to-exceed authorization proposed does not include costs associated with any removal actions or waste disposal activities which may be appropriate to mitigate pending U.S. EPA actions.

A copy of WESTON's "General Terms and Conditions" is included as Attachment B and is hereby made part of this proposal.

WESTON

Mr. Mr. Ray Carcione  
RFW No. P96-3337


-2-

18 November 1996

Please indicate your approval by signing this proposal in the space indicated below, and returning a copy to us, which will serve as our authorization to proceed. We look forward to serving you in this matter. If you require additional information, please contact Brad White or me at (513) 825-3440.

Very truly yours,

ROY F. WESTON, INC.

  
James F. Bartley  
Project Director

For JFB

Attachments

cc: Mr. Aaron Bulloff, Esq. (w/attachments)

RFW Proposal No. P96-3337 is hereby accepted  
and the terms and conditions attached agreed to:

Mr. Ray Carcione  
Foundry Sales & Supply, Inc.

By:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

ATTACHMENT A  
RATE SCHEDULE  
1 PAGE

HAS BEEN REDACTED

NOT RELEVANT TO THE SELECTION OF THE REMOVAL ACTION

**ATTACHMENT B**

**GENERAL TERMS AND CONDITIONS**

## WESTON GENERAL TERMS AND CONDITIONS

1. **Parties.** References herein to WESTON mean the entity, division, affiliate or subsidiary corporation of ROY F. WESTON, INC. (WESTON) identified in the Proposal to which these General Terms and Conditions are attached or have been incorporated by reference therein.

### 2. Definitions.

**Agreement.** The Agreement consists of WESTON's Proposal and the Contract Documents, which terms are defined in Article 3 below.

**Access Agreements.** All necessary approvals, permits, licenses, easements and consents that relate to or are necessary for performance of WESTON's services.

**Change Order.** CLIENT's written order for services differing from the services described in the Scope of Work.

**Modification.** A written amendment to the Agreement modifying the Scope of Work, the compensation and/or the terms and conditions of the Agreement signed by CLIENT and WESTON.

**Days.** A day as used herein means a business day unless otherwise described.

**Project Records.** Information in documentary, electronic medium or other form relating to performance of WESTON's obligations under this Agreement.

**Proposal.** The letter or document to which these General Terms and Conditions are attached or made a part of and which describe WESTON's technical and/or cost proposal for the Work.

**Scope of Work or Work.** The services and products WESTON has agreed to provide to CLIENT pursuant to this Agreement.

**Underground Facilities.** Equipment and material beneath the ground surface including but not limited to buried or concealed pipes, tanks, cables, instruments, utilities, and other man-made objects which may affect or be affected by WESTON's services.

3. **Contract Documents/Order of Precedence.** The Contract Documents include Modifications, Proposal, WESTON General Terms and Conditions, Scope of Work, Special Terms and Conditions, Specifications and Drawings. In the event of any ambiguity, inconsistency, or conflict between or among the respective Contract Documents, the Contract Documents shall govern in the following descending order of precedence:

- (a) Modifications
- (b) Proposal.
- (c) Special Terms and Conditions.
- (d) General Terms and Conditions.
- (e) Scope of Work.
- (f) Specifications and Drawings.

In the event of any ambiguity and/or inconsistency between or among Contract Documents having the same caption, a later dated document will take precedence over an earlier dated document.

4. **Changes.** CLIENT may make changes within the general scope of the Agreement in the Work to be performed. In order to be effective, all oral changes to this Agreement must be confirmed in writing by a Change Order. If any such changes cause an increase in WESTON's costs and/or increase the time required for, or the nature of performance of the Agreement, WESTON shall so notify CLIENT within a reasonable time following receipt of the written change order notification and an equitable adjustment in compensation shall be made through a Modification. WESTON shall have no obligation with respect to such changes, nor will WESTON be considered to be in default for failure or refusal to proceed with such changes until agreement on such cost or time impact has been incorporated into a signed Modification. In the event the Parties fail to agree upon an equitable adjustment to price or schedule resulting from changes sought by CLIENT in the Scope of Work, WESTON may at its sole option cease the Work without liability, or terminate or suspend this Agreement should WESTON determine that it would not be in its best interest to agree to such changes.

5. **Force Majeure.** WESTON will not be responsible for delays, such as, but not limited to, those attributable to acts of God, acts of the CLIENT or third Parties, weather, intervention of public authorities, work stoppages, changes in applicable laws or regulations after the date of commencement of performance hereunder or any other acts or omissions or events which are beyond the reasonable control of WESTON. Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by CLIENT's or third Party's failure to

provide specified facilities or information. The time for performance shall be equitably adjusted in the event WESTON is delayed in the performance of this Agreement by such causes and an equitable adjustment in compensation shall be made in accordance with the provisions of Article 4 hereof.

6. **Invoices.** Invoices will be submitted on WESTON's standard invoice format periodically (customarily on a monthly basis), and terms are net cash in U.S. dollars, due and payable upon CLIENT's receipt of each invoice.

When the contract payment is based on a cost reimbursement, time and material, labor hour, or fixed rate schedule, the following provisions shall apply:

(a) Where applicable, rental charges will be applied to the Project to cover the cost of pilot-scale facilities, equipment, apparatus, instrumentation or other technical machinery. When such charges are applicable, CLIENT will be advised at the start of an assignment, task or phase.

Analyses performed in WESTON's laboratories will be billed in accordance with the laboratory's standard billing practices unless specified otherwise in the Agreement.

(b) Reimbursable expenses shall include but are not limited to: travel and subsistence expenses of personnel (which may be charged on a per diem basis) when away from their home office on business directly or indirectly connected with the Project; identifiable communication, shipping, printing, and reproduction costs; subcontractors; identifiable drafting and stenographic supplies; computer time and software; and expendable materials and supplies purchased specifically for the Work. A ten percent (10%) handling and administrative charge will be added to each reimbursable expense item (as more fully described in WESTON's Hourly Charge Rates, if applicable). When WESTON, subsequent to commencement of the Work, determines that specialized equipment is needed to perform the services, it will notify CLIENT of such requirement and purchase the equipment for CLIENT as a reimbursable expense.

(c) Invoices will be submitted on WESTON's standard invoice format which will state labor hours worked and total expenses, but will not include original documentation (such as time sheets and expense receipts). If additional detail or actual invoice documentation is requested by CLIENT, the labor and expenses associated with retrieval, gathering, sorting, highlighting, mailing and copying supporting documentation will be billed to CLIENT on subsequent invoice(s).

When the method of contract payment is based on a fixed price/lump sum Agreement, invoices will be submitted based on the billing schedule proposed by WESTON and agreed to by the Parties.

7. **Payments.** Time is of the essence in the payment of invoices. Timely payment of invoices is a material part of the consideration of the Agreement and failure to pay invoices shall therefore constitute a material breach. Invoices not paid within thirty (30) calendar days of receipt by CLIENT are considered overdue and shall be subject to an interest charge at a rate equal to the greater of one and one-half percent (1 1/2%) per month on the overdue balance or the maximum charge permitted by applicable law. CLIENT agrees that in the event litigation is instituted by WESTON for payment of its invoices, WESTON shall be entitled to receive, in addition to all unpaid invoice amounts, interest at the above rate, filing and service costs and reasonable attorney's fees. In addition, CLIENT agrees that WESTON may, after giving ten (10) days written notice to CLIENT, suspend services without liability until CLIENT has paid in full all amounts due WESTON on account of services rendered and expenses incurred, including interest on overdue invoices. Invoices shall not be subject to any discount.

Invoice amounts in dispute hereunder shall not affect CLIENT's obligation to pay remaining invoice charges and CLIENT shall not offset or deduct from amounts payable hereunder any amounts for the purpose of satisfying any other claims CLIENT may have against WESTON under this or any other Agreement.

8. **Payment of Invoices.** CLIENT shall remit all invoices for more than twenty-five thousand dollars (\$25,000.00) through electronic wire transfer of funds to WESTON's bank account. Necessary information, such as bank name and account number may be obtained from WESTON's Project Manager.

**WESTON GENERAL TERMS AND CONDITIONS (continued)**

CLIENT may remit payment of invoices for less than twenty-five thousand dollars (\$25,000.00) to WESTON's lockbox account identified below:

Roy F. Weston, Inc.  
P.O. Box 8500 (S-6175)  
Philadelphia, PA 19178-6175

**9. (A) Termination for Default.**

Either Party (Terminating Party) may terminate this Agreement, in writing, if the other Party (Breaching Party) fails to fulfill its obligations under the Agreement (breaches) through no fault of the Terminating Party. In such event the Terminating Party may, after giving the Breaching Party an opportunity to cure in accordance with this Article 9(A), declare the Breaching Party in default by issuing a Declaration of Default and terminate the Agreement for cause. Prior to such Declaration of Default, the Terminating Party shall advise the Breaching Party that a Declaration of Default is imminent by sending a written notice (Notice of Imminent Default) by registered or certified mail, return receipt requested, including a description of the conditions constituting breach of the Agreement and providing the Breaching Party a period of time of not less than five (5) days and not more than twenty (20) days within which to correct such conditions to the satisfaction of the Terminating Party. In the event that the Breaching Party does not correct such conditions contained in the Notice of Imminent Default to the satisfaction of the Terminating Party within the designated period of time, the Terminating Party may issue a Declaration of Default and terminate the Agreement effective on the date specified on the Declaration of Default (the "Effective Date"). Disputes arising under this Article, including final payment to WESTON if unresolved amicably, shall proceed in accordance with Article 24 hereof. In the event this Agreement is terminated for default, the Parties shall comply with the Orderly Transfer of responsibility provisions contained in Article 9(C) below.

(B) **Termination/Suspension for Convenience of CLIENT.** The Work may be terminated or suspended by CLIENT in accordance with this Article 9(B) when CLIENT determines that such termination or suspension is in CLIENT's best interests. Any such termination or suspension shall be instituted by delivery to WESTON of a written Notice of Termination/Suspension for Convenience specifying the Agreement is being terminated or suspended for the convenience of CLIENT and directing WESTON to cease the performance of services under the Agreement upon the date of WESTON's receipt of such notification (the "Effective Date"). After receipt of the Notice of Termination/Suspension for the Convenience of CLIENT, WESTON shall upon the Effective Date cease performing services under the Agreement and as soon as practicable thereafter, WESTON shall:

(1) Terminate or suspend all orders and subcontracts to the extent they relate to the performance of the Work terminated or suspended by the Notice of Termination/Suspension for Convenience.

(2) Assign to CLIENT all of WESTON's rights, title and interest under the orders and subcontracts so terminated or suspended.

(3) Transfer to CLIENT (and CLIENT will accept responsibility for) the obligation to satisfy all outstanding liabilities and all unresolved claims arising out of termination/suspension of orders and subcontracts associated with such termination or suspension and CLIENT shall release, indemnify, hold harmless and defend WESTON from all such outstanding liabilities and unresolved claims including attorneys' fees.

(4) Transfer the responsibility for site management from WESTON to CLIENT in accordance with Article 9(C) below.

(5) Submit to CLIENT and CLIENT shall pay WESTON's termination or suspension invoice including, with respect to Work performed prior to the Effective Date of the Notice of Termination or Suspension for Convenience, the total of:

- (a) The cost and fees associated with such Work.
- (b) The cost of settling and paying claims arising out of the termination or suspension of Work under subcontracts or purchase orders.
- (c) Reasonable demobilization costs.
- (d) A reasonable allowance for profit.
- (e) All costs incurred under Article 9(C) below.

(C) **Orderly Transfer of Responsibility.** To the extent the Work involves WESTON-directed activity on site and the Work is terminated or suspended, whether for Convenience of CLIENT or for Default, the Parties hereto understand and agree that certain steps (hereinafter referred to as "Orderly Transfer") must be taken to properly implement the termination or suspension. CLIENT agrees that all costs of the Orderly Transfer will be borne by CLIENT.

Upon notification of termination or suspension, WESTON will prepare a memorandum of Orderly Transfer, which will advise CLIENT of the steps necessary to shut down the job site or otherwise effect a transition.

Upon completion of the Orderly Transfer, WESTON will provide written notification to CLIENT of WESTON's completion thereof and by such written notification shall transfer responsibility for the Work and site to CLIENT. CLIENT agrees to accept all responsibility for the Work and site, including but not limited to, continued maintenance and protection of the Work and site in accordance with all federal, state, and local laws and regulations.

In the event of termination or suspension of Work under this Agreement, whether for convenience, for default or as otherwise specifically permitted under this Agreement, CLIENT accepts full responsibility for continuing operations on the site and to the fullest extent permitted by law, CLIENT shall indemnify, hold harmless and defend WESTON and its agents and employees from and against any and all claims, damages and expenses, including but not limited to attorneys' fees, arising out of or resulting from site maintenance, protection and operation of the site following the Orderly Transfer in accordance with this Article 9(C).

10. **Health and Safety.** WESTON has established and maintains a Health and Safety program for its employees. A copy of this Health and Safety plan is available for review upon request from CLIENT. WESTON specifically disclaims any authority or responsibility for general job site safety and health and safety of persons who are not WESTON's employees. Unless otherwise specifically included in the Scope of Work, WESTON is not responsible for the work site safety or the safety of any persons on the project site other than WESTON's employees.

11. **Standard of Care.** When WESTON serves as the professional representative of CLIENT or provides any professional services to CLIENT under this Agreement, WESTON will endeavor to do so in accordance with generally accepted professional standards and practices as applied to similar projects performed under similar conditions prevailing in the community where services are rendered at the time such advice, consultation and/or services are provided by WESTON.

The Parties intend that the duty owed by WESTON is solely for the benefit of the CLIENT and that there is no other Party contemplated to benefit from the Work performed hereunder.

12. **Independent Contractor.** Except as provided elsewhere in this Agreement, WESTON shall provide its services under this Agreement as an independent contractor and its employees shall not be considered to be employees of CLIENT in any respect or for any purpose whatsoever.

13. **No Warranty/Guarantee.** Estimates of cost, approvals, recommendations, opinions and decisions by WESTON are made on the basis of WESTON's experience, qualifications and professional judgment and are not nor should they be considered or construed as warranties or guarantees. WESTON MAKES NO WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED, REGARDING THE WORK TO BE PROVIDED UNDER THIS AGREEMENT.

14. **Hazardous Materials.** CLIENT bears full responsibility and liability for the creation, existence or presence of any toxic, hazardous, radioactive, infectious or other dangerous substances existing at the site at the time WESTON commences performance of services at the site. CLIENT recognizes that when it is known, assumed or suspected that hazardous materials exist on or beneath the surface of the site of the Project or within any structure thereon, certain sampling materials or residues, such as drill cuttings and drilling fluids or asbestos removed for sampling, should be handled as if hazardous or contaminated and CLIENT shall so notify WESTON and all appropriate federal, state and local public agencies in writing as required that such materials or residues may present a potential danger to the public health, safety and/or the environment. Accordingly, when sampling is included in the Scope of Work and when determined by WESTON in its sole discretion to be necessary based on WESTON's assessment of the degree of contamination, hazard and risk, WESTON will promptly inform CLIENT that containerization and labeling of wastes or residues will be performed. WESTON will appropriately containerize and label such materials and will leave such containers on the site for proper and lawful removal, transport and disposal by CLIENT. CLIENT waives any claim against WESTON and agrees to indemnify, defend and hold WESTON harmless from any claim or liability for injury or loss which may arise as a result of the drill cuttings, drilling fluids or other assumedly hazardous materials being left on the site of the Project after containerization by WESTON.

**WESTON GENERAL TERMS AND CONDITIONS (continued)**

except where due solely to WESTON's negligent acts or omissions. The Parties do not intend for WESTON to take title to, control nor have final authority with respect to the disposition of any hazardous substance or waste. Accordingly, WESTON will not be considered to be a generator, arranger, storer, transporter, operator or disposer of hazardous substances or wastes as a result of activities performed in connection with this Agreement. CLIENT shall select and arrange for lawful disposal of any hazardous substance, including but not limited to, samples obtained in connection with work under this Agreement. WESTON may execute any manifests or forms in connection with such activity in the name of and on behalf of CLIENT.

If and to the extent that WESTON is notified of claims in connection with or arising out of the handling, transportation, treatment, storage or disposal of hazardous substances or wastes in connection with the performance of this Agreement, CLIENT shall defend, indemnify and save WESTON harmless from any and all such claims, demands, judgments or other liability or costs associated with same.

15. **Insurance.** WESTON agrees to maintain, at its own expense, Worker's Compensation, Commercial General Liability, Automobile Liability, and Professional Liability insurances as follows:

Types of Insurance	Limits of Liability
Worker's Compensation	Statutory Worker's Compensation
Employer's Liability	\$1,000,000 Employer's Liability
Commercial General Liability	\$1,000,000 each occurrence \$2,000,000 aggregate
Automobile Liability	\$1,000,000 each accident or less All vehicles including hired and non-owned
Professional Liability (including Pollution Errors and Omissions)	\$1,000,000 per single claim/aggregate
Contractor Pollution Liability Insurance	\$1,000,000 per single claim/aggregate

WESTON will, upon request, furnish appropriate insurance certificates to CLIENT. WESTON agrees to indemnify CLIENT for the hazards covered by WESTON's insurance subject to the limitation of liability contained in Article 17. WESTON agrees to purchase such additional insurance as may be requested by CLIENT (if such insurance is available), provided the costs (including WESTON's administrative costs) for such additional insurance are reimbursed by CLIENT.

16. **Indemnity.** Subject to the Limitation of Liability contained in Article 17 of this Agreement, WESTON shall defend, indemnify and save CLIENT harmless from liability for claims, demands and suits for damages for personal injuries or death, property loss or damage, caused solely by the negligent acts or omissions or willful misconduct of WESTON, provided that WESTON shall not be responsible for and CLIENT shall defend, indemnify and hold WESTON harmless from any such damages or claims arising from the negligence, acts or omissions of CLIENT, or CLIENT's agents, representatives or employees.

CLIENT shall defend, indemnify and save WESTON harmless from all liability, claims and demands, including litigation costs and reasonable attorney's fees, for personal injuries, including death, property loss or damage, injuries to others (including employees of CLIENT, WESTON, and their subcontractors), and air, water or ground pollution or environmental impairment arising out of or in any manner connected with or related to the performance of the Agreement, unless such injury, loss or damage is caused solely by the negligent acts or omissions or willful misconduct of WESTON. CLIENT hereby indemnifies, agrees to defend, and holds WESTON, its employees and agents harmless against all liability (including reasonable attorneys' fees) to third Parties (other than liability caused solely by WESTON) arising from or in connection with the violation of any third Party's trade secrets, proprietary information, trademark, copyright or patent rights in connection with the performance of the Work hereunder. CLIENT's obligation to indemnify WESTON or any employee or agent under this or any other provision of this Agreement will survive the expiration or termination of this Agreement. WESTON shall promptly notify CLIENT of any third Party claim known to WESTON and CLIENT may, at its option, participate in the defense of any such third Party action and WESTON shall cooperate with such defense.

Claims against WESTON under this Indemnity provision are considered disputes and shall be subject to Article 24 hereunder.

17. **Limitation of Liability.** Notwithstanding any other provision of these General Terms and Conditions, and unless a higher limit of liability is expressly provided elsewhere in this Agreement in a provision making specific reference to this Article 17, WESTON's total liability to CLIENT for any loss or damage from claims arising out of or in connection with this Agreement from any cause including WESTON's strict liability, breach of contract, tort or professional negligence, errors or omissions shall not exceed the lesser of the total contract price of this Agreement or the proceeds of WESTON's liability insurance as specified in Article 15 hereof. CLIENT hereby releases WESTON from any liability exceeding such limited amount. In no event shall either Party be liable to the other for special, indirect, incidental or consequential damages whether or not such damages were foreseeable at the time of the commencement of the Work.

18. **WESTON Employees.** CLIENT shall not offer to employ or actually employ any WESTON employee assigned to the Work during the term of this Agreement or for a period of six (6) months after completion or termination of this Agreement. CLIENT agrees that WESTON may utilize employees of any of WESTON's subsidiary companies and affiliates in the performance of this Agreement.

19. **Site Conditions/Site Access.** CLIENT will provide WESTON access to the site. Prior to the start of work, CLIENT shall provide WESTON or advise WESTON of the location of any and all existing environmental information, including but not limited to, studies, reports, laboratory analyses and underground facilities known to CLIENT or in CLIENT's possession or control or which it has reason to believe exist which may be pertinent to the Work. CLIENT represents that it has obtained or will obtain permission on behalf of WESTON to enter all property required for inspection and performance of WESTON's services hereunder, including any access agreements, from all necessary Parties prior to start of the Work on such property.

20. **Confidentiality.** WESTON shall maintain as confidential and not disclose to others without CLIENT's prior written consent, any information or documents obtained from CLIENT expressly designated by the CLIENT in writing to be "CONFIDENTIAL." The provisions of this Article shall not apply to information in any form which (a) is published or comes into the public domain, (b) is already known to or by the receiving Party, (c) is furnished by or obtained from a third Party which is under no obligation to keep the information confidential, or (d) is required to be disclosed by law or pursuant to a court order or subpoena of a court, administrative agency or other authority with proper jurisdiction.

Notwithstanding anything to the contrary set forth herein, it is understood by CLIENT that WESTON is or may be subject to certain legal and ethical considerations and obligations depending upon the nature and Scope of Work rendered hereunder which may require WESTON to disclose facts observed by WESTON to third Parties. In such event, WESTON shall advise CLIENT, but shall, subject to any legal or professional obligation as determined by WESTON's counsel to immediately disclose such facts, refrain from making any such disclosure until WESTON and CLIENT have conferred with respect to such facts. If for any reason the Parties are unable to confer or if WESTON believes on the advice of counsel that it must disclose such facts, WESTON shall notify CLIENT of its intention to disclose such information prior to actual disclosure to third Parties. Any such disclosure shall not be deemed a violation or breach of this Agreement and CLIENT agrees that WESTON shall be and is hereby released from any liability, claim or cause of action whatsoever with respect to such disclosure.

CLIENT agrees that WESTON may use and publish CLIENT's name and a general description of WESTON's services with respect to the Work in describing WESTON's experience and qualifications to other clients and potential clients.

WESTON's technical and pricing information contained in the Proposal or Agreement is considered confidential, proprietary information constituting a trade secret and is not to be disclosed or otherwise made available to third Parties without the prior written consent of WESTON.

21. **Use of Project Records.** All Project Records, including but not limited to, drawings and specifications, prepared or furnished by WESTON (including WESTON's independent professional associates, consultants and subcontractors) pursuant to this Agreement are instruments of service regarding the Work. CLIENT may make and retain copies for information and reference in connection with the Work.

**WESTON GENERAL TERMS AND CONDITIONS (continued)**

however, Project Records are not intended or represented to be suitable for any use other than the use specified in the Contract Documents. Any reuse of Project Records without prior written verification or adaptation by WESTON for the specific purpose intended in this Agreement will be at CLIENT's sole risk and exposure and without liability or legal exposure to WESTON, or to WESTON's independent professional associates, consultants or subcontractors. CLIENT shall indemnify and hold harmless WESTON and WESTON's independent professional associates, consultants and subcontractors from any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from reuse of any such Project Records without WESTON's express, prior written approval of reuse. Any verification or adaptation agreed to by WESTON will entitle WESTON to compensation at rates to be agreed upon by CLIENT and WESTON at that time.

**22. Records Retention.** It is WESTON's practice and policy to retain Project Records including reports, drawings and correspondence developed during performance of the Agreement for a period of three (3) years after project completion. Such records may be maintained on electronic or other media, as WESTON may deem appropriate. In the event CLIENT desires Project Records to be maintained for an additional period of time or in specific media, upon CLIENT's written request to WESTON, such records shall either (a) be delivered to CLIENT or (b) retained by WESTON for additional period(s) of time for a reasonable additional charge.

**23. Services.** It is understood and agreed that the Work performed and related products furnished to CLIENT under this Agreement are not subject to any provision of any Uniform Commercial Code.

**24. Disputes.** All disputes between the Parties arising out of this Agreement must be brought within three (3) years of the commencement of the Work hereunder and shall be resolved by submission to Mediation and Arbitration in Philadelphia, PA, or such other place as otherwise agreed in writing by the Parties as described below:

**(A) Mediation**

The Parties shall attempt in good faith to mediate each dispute and use their best efforts to reach agreement on the matters in dispute. Either Party may make written request for non-binding mediation, which shall specify in reasonable detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to Mediation in accordance with the American Arbitration Association Construction Industry Mediation Rules. The Mediator shall hear the matter and, if requested by the Parties, provide an informal opinion and advice, none of which shall be binding upon the Parties, but is expected by the Parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the Parties within twenty (20) days following written request for same. The Mediator's fee shall be shared equally by the Parties. If the dispute has not been resolved within 120 days of submission of the request for Mediation, the matter shall then be submitted to Arbitration in accordance with Article 24(B) below:

**(B) Arbitration**

All claims, counterclaims, disputes and other matters in dispute between the Parties hereto arising out of or relating to this Agreement or the breach thereof not otherwise resolved in accordance with Article 24(A) hereof shall be decided by Arbitration in Philadelphia, PA, or such other places as otherwise agreed in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in Article 24(B)(1) and Article 24(B)(2) below. This Agreement to so arbitrate and any other agreement or consent to arbitrate will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction.

(1) Notice of demand for arbitration must be filed in writing with the other Party or Parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for Arbitration be made after the time when institution of legal or equitable proceedings, based on such claim, dispute or other matter in question, would be barred by the applicable statute of limitations or statute of repose.

(2) No arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a Party to this Agreement.

(3) By written consent signed by all the Parties to this Agreement and containing a specific reference thereto, the limitations and restrictions

contained in Article 24(B)(1) and Article 24(B)(2) may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent.

(4) The award rendered by the arbitrators will be final, not subject to appeal, and judgment may be entered upon it in any court having jurisdiction thereof.

(5) In the event of any disputes between the Parties to this Agreement, the prevailing Party in any ensuing litigation shall be entitled to recover its reasonable costs and attorney's fees incurred by the prevailing Party.

**25. No Third Party Beneficiary.** WESTON's services are performed for the sole and exclusive benefit of CLIENT. This Agreement does not create any right or benefit to anyone other than CLIENT and WESTON.

**26. Sales and Use Tax.** Pending a final ruling by appropriate tax authorities with respect to the imposition of a State Sales and Use Tax applicable to WESTON's professional services, CLIENT acknowledges that the obligation to pay sales and use tax, if ruled applicable to WESTON's services, is CLIENT's obligation as purchaser. CLIENT agrees to pay such sales and use tax and hereby releases, indemnifies and holds WESTON harmless from any and all claims related to sales and use tax as it applies to WESTON's professional services provided under this Agreement.

**27. Severability/Savings.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof. If any provisions of this Agreement are unenforceable, for any reason whatsoever, such provisions shall be appropriately limited and given effect to the extent that it may be enforceable.

**28. Assignment.** Neither Party shall assign, subcontract or otherwise transfer this Agreement or any rights or obligations hereunder to a subsidiary, successor, affiliate or any third Party, except as expressly provided herein, without the prior written consent of the other Party. Any attempted assignment will be null and void and without force and effect. Nothing hereunder shall prevent WESTON from employing such professional associates and consultants as WESTON deems appropriate to assist WESTON in the performance of services hereunder.

**29. Litigation Services.** CLIENT and WESTON agree that the Work performed hereunder may involve some form of legal process or proceedings during or after performance of the project. Such legal process or proceedings may include production of records, forms of discovery such as depositions and interrogatories, filings and court testimony.

CLIENT agrees that if WESTON is required to participate in or otherwise respond to such legal process or proceedings in which WESTON is not a Party, CLIENT shall compensate WESTON for its efforts in so doing, including but not limited to, expenses, labor, document reproduction costs, travel expenses, legal fees, etc., reasonably incurred in connection with its efforts in responding to such legal process or proceedings.

**30. Governing Law.** The interpretation and enforcement of this Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

**31. Entire Agreement.** This Agreement represents the entire and integrated Agreement between the Parties and supersedes all other prior negotiations, representations or agreements, either written or oral.

Any terms and conditions set forth in CLIENT's purchase order, requisition, or other notice of authorization to proceed are inapplicable to the Work, except when specifically provided for in full on the face of such purchase order, requisition, or notice of authorization and specifically accepted in writing by WESTON. WESTON's acknowledgment of receipt of any purchase order, requisition, notice or authorization or WESTON's performance of Work subsequent to receipt thereof does not constitute acceptance of any terms or conditions other than those set forth herein.



95P-1958

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